

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 01-0300P**

**Sales Tax**

Calendar Years 1995, 1996, 1997, 1998, 1999, and 2000

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer franchises stores throughout the country. It franchises the store, sells it to a third party from whom it receives an initial fee and reimbursement for the store start up expenses. Taxpayer then sells its products to the franchisees at wholesale and receives franchise fees based upon sales from each location.

The audit assessment stemmed from the taxpayer failing to bill franchises for tangible personal property and realty materials transferred to them when a store was prepared and sold to them. Taxpayer provided resale certificates to vendors but did not invoice for sales taxes when resold.

**I. Tax Administration – Penalty**

**DISCUSSION**

At issue is whether the taxpayer was negligent in reporting its sales and use taxes. Taxpayer protests the penalty based upon reasonable cause. Taxpayer states it discovered its error in not charging sales tax on graphics and had accounting change its procedures immediately. Taxpayer further states it is doing the best it can based upon information supplied regarding the taxability of real and tangible personal property. It is working on ways to improve in this area. Taxpayer requests a penalty waiver.

Taxpayer's errors amounted from four percent (4%) in the year 2000 to sixty-four (64%) in 1995 that relates directly to the amount of new franchises opened. The issue regarding the collection of sales tax on realty materials and tangible personal property are clear in the Indiana Code and Regulations. Taxpayer should have made itself aware of the tax laws.

**FINDING**

Taxpayer's protest is denied.

DSW/RAW/JMS/dw 012012